

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE)
VARIANCE PERMIT ISSUED BY PACIFIC)
COUNTY TO HOMER SMITH AND DENIED)
BY THE DEPARTMENT OF ECOLOGY,)
HOMER SMITH AND PACIFIC COUNTY,)
Appellants,)
v.)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
Respondent.)

SHB No. 79-15

FINAL FINDINGS OF
FACT, CONCLUSIONS OF
LAW AND ORDER

This matter, the disapproval of a variance by the Department of Ecology, came before the Shorelines Hearings Board, David Akara, presiding, Chris Smith, David W Jamison, James S. Williams and Robert S. Derrick, on August 17, 1979 in Lacey, Washington.

Appellant was represented by his attorney, August F. Hahn; respondent was represented by Robert V. Jensen, Assistant Attorney General.

1 Having heard the testimony, having examined the exhibits, having
2 considered the contentions of the parties, and having given each
3 party the opportunity to present testimony subsequent to the
4 hearing, the Shorelines Hearings Board makes these

5 FINDINGS OF FACT

6 I

7 Appellant owns a 55 foot wide by 125 foot long residential lot
8 in Surfside Estates development which is situated on the ocean side
9 of the Long Beach Peninsula in Pacific County. The County owns a
10 section of land on the ocean side of appellant's property, which
11 includes a 100 foot long "protective strip" which includes a 20 foot
12 high ocean dune and grasses. The dunes are nearing their natural
13 maximum height of about 21 feet.

14 Approximately three years ago, appellants began construction of
15 a house, including a full basement, which was completed about one
16 year ago. At the time of commencing construction, the lower wooden
17 portions of the house were situated one and one-half feet above the
18 sand; they are now located six inches above the sand, and appellant
19 is concerned about wood rot should sand cover the wood.
20 Additionally, appellant is concerned about the loss of view of the
21 ocean from his house as the dunes within the protective strip
22 increase in height. To solve his concerns, appellant proposed to
23 take the sand from around his house and cut off the top 18 inches of
24 the dunes within the protective strip and move it towards the
25 ocean. To improve his view, he sought and received a variance to
26 remove the top 18 inches of the dunes from the County. The

1 Department of Ecology (hereinafter DOE) disapproved the variance
2 resulting in the instant appeal.

3 II

4 Removal of the top 18 inches of sand is not minimal in nature
5 and would injure the marum grass which is the dominant vegetation on
6 the dunes, and which is responsible for the maintenance of the
7 height of the dunes.

8 The dunes are also thought to provide protection from flooding
9 during storms and high tides. A 21 foot dune height is expected to
10 protect against the 100 year frequency of storm or flood.

11 III

12 The approved and adopted Pacific County Shoreline Master Program
13 (SMP) states the policy that ocean-front property owners should be
14 allowed to modify the seaward-most dunes to improve their view,
15 provided that the modification does not seriously harm the dunes,
16 and then only to the minimum extent necessary to carry out that use
17 activity. Section 23.04. The purpose of the dunes is to protect
18 inland areas from high tides, storms, wind-blown sand and floods.
19 Additionally, dunes provide open space which has economic, aesthetic
20 and ecological values. Section 23.01. The SMP thus allows for a
21 minimized modification to the dunes if the values and purposes of
22 the dunes are not harmed. Any modification must also be done in
23 accordance with the regulations, Sections 23.10 through .14.

24 Section 23.10.02 provides for a 100 foot wide protective strip
25 along the beach. Section 23.10.03 prohibits any use within the

1 strip which may damage, destroy or remove any sand dune, dune grass
2 or other vegetation growing on the sand dunes. Roads, trails,
3 walkways or other means of access to the beach are permitted where
4 the effect on the duneland and vegetation is minimal. Dune
5 modifications are permitted between the building set-back line and
6 the protective strip. Section 23.11. The protective strip cannot
7 be altered because of dune modifying operations. Section 23.11.02.
8 Natural vegetation must not be damaged or removed unless the
9 disturbed area is revegetated or protected from wind erosion.
10 Section 23.11.03.

11 The regulations place the protective strip in a natural
12 environment designation and clearly prohibit modification of the
13 dunes in the protective strip except for access to the beach where
14 the effect on the duneland and vegetation is minimal. Appellant's
15 proposal will not have a minimal effect. Therefore, appellant
16 cannot improve his view of the ocean by modifying the dune in the
17 protective strip. However, modifications upland from the protective
18 strip are permitted under certain restrictions.

19 IV

20 Any Conclusion of Law which is deemed a Finding of Fact is
21 hereby adopted as such.

22 From these Findings, the Board comes to these

23 CONCLUSIONS OF LAW

24 I

25 DOE relies upon WAC 173-14-150(2)(c and e) and (4) for its

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER 4

1 decision¹. The DOE's decision is supportable because the project
2 will not be compatible with the natural environment purpose and
3 designations as applied to the protective strip. The cumulative
4 impact of additional requests like that of appellant's, for similar
5 reasons, could produce substantial adverse effects to the shoreline
6 environment. If a change to the master program rules is desired, it
7 would be better to change the rule rather than address dune
8 modification in the protective strip on a case by case basis. As a
9 final observation, we note that there is nothing in the master
10 program to prevent appellant from removing the sand at the foot of
11 his house.

12
13
14 1. WAC 173-14-150 provides in part:

15 . . .
16 (2) Variance permits for development that will be
17 located landward of the ordinary high water mark (OHWM),
18 as defined in RCW 90.58.030(2)(b), except within those
19 areas designated by the department as marshes, bogs, or
20 swamps pursuant to chapter 173-22 WAC, may be authorized
21 provided the applicant can demonstrate all of the following:

22 . . .
23 (c) That the design of the project will be compatible
24 with other permitted activities in the area and will not
25 cause adverse effects to adjacent properties or the
26 shoreline environment designation.

27 . . .
(e) That the public interest will suffer no substantial
detrimental effect.

(4) In the granting of all variance permits, consideration
shall be given to the cumulative impact of additional requests
for like actions in the area. For example if variances were
granted to other developments in the area where similar
circumstances exist the total of the variances should also
remain consistent with the policies of RCW 90.58.020 and
should not produce substantial adverse effects to the
shoreline environment.

II

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER


The action of the Department of Ecology disapproving the variance to Homer Smith is affirmed.

DATED this 11th day of January, 1980.

SHORELINES HEARINGS BOARD



DAVID AKANA, Member



CHRIS SMITH, Member



DAVID W JAMISON, Member



JAMES S. WILLIAMS, Member



ROBERT S. DERRICK, Member